a violation of duty to the sovereign who sends him, participation in business ventures outside the official duty does not render the envoy liable to civil suit. *Magdalena, etc. Co.* v. *Martin*, 2 E. & E. 94. The court in the principal case found that the defendant had not waived his immunity as a foreign diplomat, raising, but not squarely deciding, the interesting point whether or not he could have waived it. That an unconditional appearance does constitute a waiver seems to be the decision in *Taylor* v. *Best*, 14 C. B. 487. (But see the *dictum* apparently *contra* in *Barbuit's Case*, Cas. t. Talb. 281, 282.) See also 1 RIVIER, PRINCIPES DU DROIT DES GENS, 495, 496. It is submitted, however, that there should be no waiver, express or implied, without permission of the envoy's sovereign. It is the sovereign's business that the representative is sent abroad to do. One purpose of the privilege is that the business shall not be interfered with by local restrictions. See *Barbuit's Case*, *supra*, 282. Furthermore, it would also hazard a sovereign's dignity if his ambassador, even through his own volition, could place himself under temporary allegiance to a foreign power. See *Schooner Exchange* v. *M'Faddon*, 7 Cranch (U. S.) 116, 138. The ambassador should not be allowed to waive the privilege which attaches to the office, rather than to him as a person. Such waiver is forbidden American diplomats. See 4 MOORE'S INT. LAW DIGEST, 631. French authority supports the view suggested. *Dalloz*, 1907, 2: 281. See DESPAGNET, DROIT INTERNATIONAL PUBLIC, 3 ed., 258. There are *dicta* of American courts to the same effect. See *United States* v. *Benner*, 24 Fed. Cas. 1084, 1087; *Valarino* v. *Thompson*, 7 N. Y. 576, 579.

JUDGMENTS — OPERATION AS BAR TO OTHER ACTIONS — JUDGMENT FOR DAMAGES TO PERSON AS BAR TO RECOVERY FOR DAMAGE TO PROPERTY. — By a contract of insurance, the owner of an automobile had agreed to assign to the plaintiff all rights for damage thereto. Both the automobile and the owner were injured by the same negligent act of the defendant. The owner having recovered damages for the injury to his person, the insurance company now sues for the injury to the automobile. *Held*, that the action may be maintained. *Underwriters at Lloyd's Ins. Co.* v. *Vicksburg Traction Co.*, 63 So. 455 (Miss.).

By the weight of American authority, one tortious act injuring a man as to his person and property gives rise to only one cause of action, with damage for two different sorts of injury; and judgment for the one injury bars a subsequent action for the other. *King* v. *Chicago, M. & St. P. Ry. Co.*, 80 Minn. 83, 82 N. W. 1113; see cases collected 50 L. R. A. 161. Under this doctrine the owner in the principal case would have been precluded from bringing any action for the injury to his property. Since an assignee can have no greater right than his assignor (*Savannah Fire & Marine Ins. Co.* v. *Pelzer Manufacturing Co.*, 60 Fed. 39), the plaintiff's action must be equally precluded. The court, however, purporting to accept the American doctrine, bases it entirely upon a policy which prevents a plaintiff vexing a defendant with two suits when one would suffice, and holds this policy inapplicable where the suits are brought by different parties. By thus restraining the operation of the doctrine that there is but one cause where the same act produces two kinds of damage, the court attains a most desirable result. But it would seem equally expedient and sounder on theory to accept the English view acknowledging the existence of two causes of action (see *Brunsden* v. *Humphrey*, 14 Q. B. D. 141; 24 HARV. L. REV. 492), but to limit its application by the policy that where one action suffices, a plaintiff may sue but once although two dissimilar rights are injured.

LAW AND FACT — PROVINCES OF COURT AND JURY — WHETHER LOGICAL CONNECTION A PRELIMINARY QUESTION OF FACT FOR COURT. — The plaintiff was injured by a defective appliance furnished by the defendant, his employer.

To show that the plaintiff had notice of the danger, the defendant offered evidence of a conversation with respect to the defect, within twenty yards of the plaintiff. The court below excluded the evidence, because it was not satisfied that the plaintiff heard the conversation. *Held*, that whether the plaintiff heard the conversation was a question of fact for the court. *Gila Valley, G. & N. Ry. Co.* v. *Hall* (U. S. Sup. Ct., Case No. 68, Jan. 5, 1914).

Where a rule of evidence excludes logically probative matter unless it has satisfied certain prescribed tests, there is a preliminary question of fact for the court, whether these requirements have been complied with. *Boyle* v. *Wiseman*, 11 Ex. 360; *Comm.* v. *Brewer*, 164 Mass. 577, 42 N. E. 92. This principle should not be relaxed because of the fortuitous circumstance that the fact which is presented for the court's decision happens to be the precise issue upon which the jury is to pass. *Doe d. Jenkins* v. *Davies*, 10 Q. B. 314; *State* v. *Lee*, 127 La. 1077, 54 So. 356. *Contra*, *Respub.* v. *Hevice*, 3 Wheeler's Cr. Cas. (Pa.) 505. The weight to be given such evidence, of course, lies with the jury. *Welstead* v. *Levy*, 1 M. & Rob. 138; *Comm.* v. *Brewer*, *supra*. But the admission of the evidence rejected in the principal case would contravene no general rule of exclusion. The conversation regarding the defect is offered as the secondary link in a chain of circumstantial proof. The court requires, as a condition precedent to its admission, that the primary link — the fact that the plaintiff heard the conversation — be proved to the satisfaction of the judge. It is submitted, with deference, that the application of such a test is a usurpation of the jury's function. The secondary matter should come in, provided evidence is offered in support of the primary proposition, from which the jury, as reasonable men, could find the connection which the proponent of the evidence seeks to establish. *Stowe* v. *Querner*, L. R. 5 Ex. 155; *Comm.* v. *Robinson*, 146 Mass. 571, 16 N. E. 452.

MUNICIPAL CORPORATIONS — FRANCHISES AND LICENSES — MODIFICATION ALLOWING INCREASE IN RATES. — A municipality was empowered to award franchises only to the best bidder after due advertisement. Having awarded a franchise to a telephone company upon its agreement to furnish service to subscribers at a given rate, it subsequently relieved the company of this stipulation, allowing it to charge increased rates. *Held*, that the modification is valid. *Lutes* v. *Fayette Home Telephone Co.*, 160 S. W. 179 (Ky.).

Where a party, as sole beneficiary of a contract, is vested with direct rights against the promisor, he cannot be deprived of these rights by any agreement between the contracting parties. *Henderson* v. *McDonald*, 84 Ind. 149. See WALD'S POLLOCK ON CONTRACTS, 3 ed., 273. But such rights will not vest unless the parties to the contract so intend. *House* v. *Houston Waterworks Co.*, 88 Tex. 233, 31 S. W. 179. In the principal case, the municipality clearly intended to secure benefits for its citizens. However, aside from any question of rights in the franchise contract, the citizens have direct rights against the promisor to compel performance of its common law obligation as a public-service company. *Webster* v. *Nebraska Telephone Co.*, 17 Neb. 126, 22 N. W. 237. It would seem reasonable to suppose that the municipality intended merely to create a public-service company against which the citizens would have such rights, but to remain itself *dominus* of the contract. In such a case, the right of the municipality to agree with the co-contractor on alterations cannot be denied. *Meech* v. *City of Buffalo*, 29 N. Y. 198. However, so material an alteration as was here made would seem in effect the granting of a new franchise. By its charter the city was required to award franchises only after due advertisement and to the highest bidder. Unless, therefore, the defendant would probably have been the only bidder for a new franchise, so that advertisement would have been a mere matter of form (*City of Hartford* v. *Hartford Electric Light Co.*, 65 Conn. 324, 32 Atl. 925), the decision would seem incorrect.